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SEWERAGE SYSTEM—PRELIMINARY SURVEY TO DETERMINE APPROXIMATE COST—MUNICIPALITY HAS NO AUTHORITY TO ISSUE BONDS FOR SUCH SURVEY—HOW SUCH WORK MAY BE COMPENSATED.

SYLLABUS:

A municipality may not issue bonds for the purpose of paying the cost of a preliminary survey to be made with the view of determining the approximate cost of the construction of a proposed sewerage system. In the event, however, bonds are to be issued for the construction of such a system, the cost of such preliminary survey may properly be included as part of the cost of constructing such system.

COLUMBUS, OHIO, September 2, 1930.

HON. FORREST E. ELY, *Prosecuting attorney, Batavia, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The village of L. has been ordered by the Board of Health to construct a sewerage system.

Before the question can be submitted to the voters for bond issue, it would be necessary that a preliminary survey be made, in order to obtain information as to the approximate cost. The preliminary survey would cost eight hundred (\$800.00) dollars.

Can the village of L. issue bonds in the amount of \$800.00 without submitting this question to the electors, it not being for any permanent improvement but for plans and specifications for a proposed public improvement?”

Section 2293-2, General Code, being part of the Uniform Bond Act, provides that “The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct.”

The term “permanent improvement” is defined in paragraph (e) of Section 2293-1, General Code, as follows:

“‘Permanent improvement’ or ‘improvement’ shall mean any property, asset or improvement with an estimated life or usefulness of five (5) years or more, including land and interests therein, and including reconstructions, enlargements and extensions thereof having an estimated life or usefulness of five years or more. Reconstruction for highway purposes shall be held to include the resurfacing but not the ordinary repair of highways.”

Section 2293-19, General Code, provides that “The taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which such subdivision has power to issue.” It will be observed that the question of issuing only such bonds as a subdivision has power to issue may be submitted to the electors. Under the provisions of Section 2293-14, General Code, setting forth the limitations of net indebtedness which may be incurred by a municipal corporation, there are limitations as to the amount of bonds which may be issued by a municipality without authority of the electors. These limitations, however, are not in any way dependent upon the purpose of a proposed issue but are dependent upon the financial condition of the corporation. Irrespective, therefore, of whether or not a proposed bond issue is to be submitted to the electors, it is neces-

sary to determine the existence of authority to issue bonds for the purpose of paying the cost of a preliminary survey of a proposed sewerage system.

While such a survey as is contemplated may have an estimated life of five years or more, it is obvious that it is neither an asset nor an improvement until such time as it is adopted and the sewerage system installed. I have little difficulty, therefore, in concluding that such a preliminary survey is not of itself a "permanent improvement" as defined in Section 2293-1, *supra*, for which bonds may be issued by a municipality under the provisions of Section 2293-2. It is well established that municipal corporations and public officials have only such powers as are conferred by law and in the absence of any legislature authority to issue bonds and incur indebtedness for any given project, such authority does not exist.

It must be borne in mind that in the event bonds are to be issued for the purpose of constructing a sewerage system, such bonds may undoubtedly be issued in an amount to include the cost of the necessary preliminary surveys. The cost of constructing sewers may in part be assessed under the provisions of Section 3812, General Code. Section 3896, General Code, being one of the sections of the chapter relating to the levy of assessments by municipal corporations, expressly provides that the expense of preliminary and other surveys may be included as part of the cost of any improvement contemplated in that chapter. The section provides as follows:

"The cost of any improvement contemplated in this chapter shall include the purchase money of real estate, or any interest therein, when acquired by purchase, or the value thereof as found by the jury, when appropriated, the costs and expenses of the proceeding, the damages assessed in favor of any owner of adjoining lands and interest thereon, the costs and expenses of the assessment, the expense of the preliminary and other surveys, and of printing, publishing the notices and ordinances required, including notice of assessment, and serving notices on property owners, the cost of construction, interest on bonds, where bonds have been issued in anticipation of the collection of assessments, and any other necessary expenditure."

The question of issuing bonds for a preliminary survey of a sewerage system must be distinguished from the question as to the issuance of bonds for a survey which in itself and standing alone when completed, is an asset with an estimated life or usefulness of five years or more. A question of this nature was considered in Opinion No. 239, rendered under date of March 25, 1929, appearing in Opinions of the Attorney General for 1929, Vol. I, p. 345, the syllabus of which is as follows:

"A municipality is authorized by the Uniform Bond Act to issue bonds for the purpose of paying the cost of a cadastral survey."

In view of the foregoing and in specific answer to your question, it is my opinion that a municipality may not issue bonds for the purpose of paying the cost of a preliminary survey to be made with the view of determining the approximate cost of the construction of a proposed sewerage system. In the event, however, bonds are to be issued for the construction of such a system, the cost of such preliminary survey may properly be included as part of the cost of constructing such system.

Respectfully,

GILBERT BETTMAN,

Attorney General.